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MEMORANDUM

TO: Bob Wise

DATE: December 2, 1985

FROM: Jonathan Rose

SUBJECT: Governor's Emergency Powers - Phelps Dodge Copper Strike

I. General Powers

Under the Constitution, Governor is Commander-in-Chief of ~~the~~ military, Article 5, Section 3. In addition, the Governor shall transact all executive business with civil and military officers of Government and shall take care that laws are faithfully executed, Article 5, Section 4. More specifically, however, several statutes expressly authorize Governor to mobilize the National Guard and the Arizona Highway Patrol.

A. National Guard

The Governor has power to mobilize National Guard in an emergency. A.R.S. Section 26-172. The Governor may proclaim an emergency or deem it necessary to protect lives or property, and then mobilize the National Guard. A.R.S. Section 26-172(A). Also, the Governor may mobilize the National Guard in response to request by the civil authorities of a county or a municipality. A.R.S. Section 26-172(C). Other provisions govern the funding of such mobilizations. See A.R.S. Sections 26-156, 26-173, and 35-192.

B. DPS

The Governor has power to order the Arizona highway patrol to provide emergency services in an emergency. A.R.S. Section 26-1743.01. As with the National Guard, the Governor can proclaim an emergency, A.R.S. Section 41-1743.01(A), or respond to a local request, Section 41-1743.01(B). The powers under A.R.S. Section 41-1743.01 are supplemental to those in A.R.S. Section

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26-172. See A.R.S. Section 4-1-1743.01(C). The Governor may also direct state agencies to provide mutual aid to assist political subdivisions in a local emergency. A.R.S. Section 26-311(D).

II. Phelps Dodge Strike

In the Phelps Dodge Strike, the Governor declared a State of Emergency and mobilized the National Guard on August 10, 1983 under A.R.S. Section 26-172 pursuant to a request by local civil authorities. The Governor directed DPS on August 16, 1983 to provide mutual aid pursuant to A.R.S. Section 26-311(D).

Specific Chronology. The major events that occurred were as follows:

- A. July 14, 1985. Phelps Dodge obtained court orders in Pima County prohibiting the obstruction of the gates and the harassment of workers in Morenci/Clifton and Ajo. Appendix A
- B. August 9, 1983. The Governor made a statement regarding his constitutional obligation to insure enforcement of the court order. Appendix B
- C. August 10, 1983. The Governor issued an Emergency Proclamation declaring a State of Emergency and mobilizing the National Guard under A.R.S. Section 26-172 pursuant to a request by local civil authorities. Appendix C
- D. August 16, 1983. The Governor ordered DPS to provide mutual aid to political subdivisions under A.R.S. 26-311(D) in accordance with August 10, 1983 Declaration of an Emergency. The Governor also expanded the power of the National Guard to deal with problems under A.R.S. Section 26-172(B). Appendix D
- E. August 30, 1983. The Governor commanded the federal mediation service and asked Phelps Dodge to suspend evictions from company housing. Appendix E
- F. September 1, 1983. Phelps Dodge refused to delay the evictions. Appendix F
- G. May 6, 1984. The Governor and DPS obtained a temporary restraining order against strikers. Appendix G
- H. August 3, 1984. The Governor extended the August 10, 1983 Copper Strike Emergency Proclamation for 12 months until August 10, 1985. Appendix H
- I. August 2, 1985. Governor terminated, effective August 10, 1985, the State of Emergency declared on August 10, 1983.